

(2021) 11 CAT CK 0014

In the Central Administrative Tribunal

Case No : Original Application No. 180, 00238 Of 2019

S.Unnikrishnan

APPELLANT

Vs

Union Of India & Others

RESPONDENT

Date of Decision : 09-11-2021

Acts Referred:

Citation : (2021) 11 CAT CK 0014

Hon'ble Judges : P. Madhavan, Member J;K.V .Eapen, Member (A)

Bench : Division Bench

Advocate : P.V. Mohanan, T.C. Krishna, Imam Grigorios Karat

Final Decision : Disposed Of

Judgement

K V Eapen, Member A

1. This Original Application has been filed seeking the following reliefs :

1. To direct the respondents to regularize the period of the service of the applicant from 31.05.2016 (the date of retirement from State Forest Service) to 15.06.2017 (the date of assumption of charge in Indian Forest Service cadre) as on duty and to fix the pay and allowance and increments notionally in the Senior Scale/Junior Administrative Grade in Indian Forest Service cadre for all purposes including arrears of pay and disburse the same forthwith.

2. Any other appropriate order or direction as this Hon'ble Tribunal deem fit in the interest of justice.

2. The applicant retired on superannuation as Deputy Conservator of Forests (Non cadre) from the State Forest Service on 31.05.2016. It is submitted that before his superannuation he had obtained an order from this Tribunal to the effect that the retirement from State Forest Service will not preclude the respondents from considering him for selection and appointment to the Indian Forest Service cadre on promotion quota for the vacancies for the years 2013 and 2014. The Selection Committee Meeting for preparation of Select List of

2013 and 2014 to the Indian Forest Service (Kerala) cadre was convened on 22.12.2016 and selected the applicant for the vacancies of the year 2014 vide Notification dated 14.02.2017. Vide Annexure A-3 dated 19.04.2017 the applicant was appointed to the Indian Forest Service (Kerala) cadre and he assumed charge in the Indian Forest Service cadre on 15.06.2017.

3. It is submitted that this Tribunal has considered similar issues in its order dated 23.07.2008 in O.A.No.589/2006 and O.A.No.595/2006 and order dated 26.05.2009 in O.A.No.441/2008 and O.A.No.442/2008 wherein the respondents were directed to regularize the period from 01.04.2003 to 28.04.2004 for the purpose of pay and allowances and increments in Senior Time Scale of pay/Junior Administrative Grade in Indian Forest Service cadre for all service purposes including pension. These orders of this Tribunal were confirmed by the Hon'ble High Court of Kerala by judgment dated 18.03.2014 in [W.P.(C) No.31299/2009]. In purported compliance of the judgment of the Hon'ble High Court the 2 nd respondent issued order dated 25.03.2015 in respect of nine officers regularizing their intervening period between retirement from State Forest Service and joining the Indian Forest Service notionally as duty for all benefits including monetary benefits which is produced at Annexure A-8.

4. The applicant submits that there was an inordinate delay in convening of the Selection Committee. If the Selection Committee had met in time and the select list had been approved, he would have been appointed to IFS Cadre much before his superannuation from State Forest Service. He thus claims that he is entitled to get the period during which he was kept out of service regularized ie., from the date of his retirement from the State Forest Service on 31.05.2016 to the date of joining in the IFS Cadre on 15.06.2017, as duty and is also entitled to get the pay and increments in Senior Scale/Junior Administrative Cadre in the Indian Forest Service Cadre for all service purposes including arrears of pay and to disburse the arrears of pay forthwith. He had also given a representation vide Annexure A-9 to the 2nd respondent, Chief Secretary, Government of Kerala dated 16.03.2019.

5. The counsel for the respondent State Government has filed Reply and Additional Reply Statements. They have furnished a letter at Annexure R- 2(B) from the Government of India, MoE&F dated 09.11.2006 which has clarified that the intervening period from the date of retirement from SFS on attaining the age of superannuation to the date of assuming charge as IFS officer after issue of orders of their appointment may be treated as 'dies-non' and the period the officers have not worked in the Service will not count towards Service and hence cannot be regularized. The benefits released to the 9 IFS retirees as per Annexure A-8 and Annexure A-10 are based on the direction from the Hon'ble High court considering it a special case and the judgment is limited to them and not universal. Further, the Hon'ble Supreme Court in State of Haryana vs. O.P.Gupta, JT 1996 (3) SC 141 and in Paluru Ramakrishnaiah & Ors. vs. Union of India & Anr., JT 1989 (1) SC 595 has held that "there has to be 'no pay for no

work' ie., a person will not be entitled to any pay and allowances during the period for which he did not perform the duties of higher post, although after due consideration, he was given a proper place in the gradation list having been deemed to be promoted to the higher post with effect from the date his junior was promoted....." The applicant had not worked during the above period and therefore, he is not entitled to get any pay during the above period between 31.05.2016 (the date of superannuation from State Forest Service) to 15.06.2017 (the date of assumption of charge in the IFS cadre). The applicant was appointed to the IFS cadre as claimed by him. It is submitted that the applicant is not entitled to get the benefits as claimed as there is no such stipulation in the All India Service Rules providing for regularization of such intervening periods and the rules also do not contemplate allowing the same. If the same is permitted it will open the way for several such requests being made for regularization which will result in huge financial loss to the State exchequer and resulting in grant of undue benefits even for the periods where the individual had not worked. He also objects to using of the ratio of Annexure A-7 judgment as precedent.

6. In M.A.No.180/737/2021 filed by the applicant it has been indicated that Annexure R-2(B) letter and consequential order dated 15.01.2007 were impugned in O.A.No.589 & 595/2006 and O.A.No.441/2008, O.A.No.442/2008 and related matters. This Tribunal after considering the whole issue have set aside Annexure R-2(B) letter dated 09.11.2006. Challenging the above orders of this Tribunal, the State of Kerala filed W.Ps which was dismissed by Annexure A-7 judgment by the Hon'ble High Court of Kerala. Further, this Tribunal by order in O.A.No.405/2021 and related matters dated 17.09.2021 have passed orders regularizing the periods from the date of retirement from State Service to the date of joining in All India Service, which is produced at Annexure A-11. The applicant has therefore prayed in the M.A that the O.A may be disposed of in terms of the order in O.A.No.405/2021 and connected cases dated 17.09.2021.

7. Respondent No.1 Union of India has not filed any statement and is not a contesting party in the matter.

8. When the matter came up for consideration, learned counsel for the applicant has relied on the decision of the Hon'ble High Court of Kerala in W.P.(C) No.9639/2010 - State of Kerala vs. K.V.Ravikumar & Ors. (Annexure A7), arising out of O.A.No.564/2008 of this Tribunal wherein the Hon'ble High Court has ordered that the intervening period from the relief from the State Service and induction into the All India Service will be regularized notionally and all benefits, including monetary benefits, for that period shall be granted to the applicants before the Tribunal. The Hon'ble High Court had also relied on the procedure adopted by the Hon'ble Supreme Court of India in Union Public Service Commission and Another v. A.K.Salim and Others [(2008) 11 SCC 495]. Further in O.A.No.405/2021 filed by P.K.Madhu (supra) we have upheld the position in line with the decision of the Hon'ble High Court therein in our order dated

17.09.2021.

9. On going through the above judgments, we find that the applicant is entitled to be considered for notional fixation of his pay and regularization of service for the period after 31.05.2016 (the date of superannuation from State Forest Service) to 15.06.2017 (the date of assumption of charge in the IFS cadre). The decision of the Hon'ble High Court of Kerala in K.V.Ravikumar's case (supra) squarely covers the position in this matter. We find that the applicant in this case is also entitled (as in that matter) to get the benefit of notional regularization of the above period and to have fixation of pay and pensionary benefits arising out of the same. We order accordingly. The respondents are directed to comply with the above order within a period of three months from the date of receipt of a copy of this order.

10. The Original Application and M.A.No.180/737/2021 are disposed of as above. No order as to costs.